

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS**

IN RE:)	
)	
LAWRENCE B. SCHMIDT and)	No. 99-82588
JESSIE M. SCHMIDT,)	
Debtors,)	
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)	
LAWRENCE B. SCHMIDT and)	
JESSIE M. SCHMIDT,)	
Plaintiffs,)	
)	
vs.)	Adv. No. 99-8186
)	
PUGH, JONES & JOHNSON, P.C.,)	
Defendant.)	

OPINION

This matter was submitted to the Court for decision on the Joint Pretrial Statement submitted by the Plaintiffs, LAWRENCE B. SCHMIDT and JESSIE M. SCHMIDT, (DEBTORS), and the Defendant, PUGH, JONES & JOHNSON, P.C. (CREDITOR).

The facts are not contested. The DEBTORS filed a Chapter 13 petition in Bankruptcy on August 12, 1999. The CREDITOR holds a judgment lien against the DEBTORS' residence. In their amended Chapter 13 plan, the DEBTORS propose to treat the CREDITOR as an unsecured creditor, avoiding its judgment lien pursuant to § 522(f) of the Bankruptcy Code, 11 U.S.C. § 522(f). To that end, the DEBTORS brought this adversary proceeding. According to the parties, the legal issues to be decided are:

1. Whether [the CREDITOR's] secured judicial lien impairs the [DEBTORS'] homestead exemption where [DEBTORS] are not selling their home; more specifically, whether judgment liens attach to a judgment debtor's homestead exemption pursuant to Illinois law.

2. Whether the windfall the [DEBTORS] seek, by avoiding [the CREDITOR's] secured judicial lien and thus making no payments to [the CREDITOR], is unjust and contrary to the spirit of the U.S. Bankruptcy Code and more specifically the spirit of Chapter 13 thereof.

In opposition to the DEBTORS' motion to avoid the CREDITOR's judicial lien, the CREDITOR relies upon the decision of Judge Lessen, a fellow Judge in the Central District of Illinois, in *In re Ward*, 157 B.R. 643 (Bkrcty.C.D.Ill. 1993), holding that a debtor could not avoid a judicial lien pursuant to §522(f)(1) as impairing the debtor's homestead exemption, because, under Illinois law, a judgment lien does not attach to exempt property. In so holding, Judge Lessen relied upon *In re Cerniglia*, 137 B.R. 722 (Bkrcty.S.D.Ill. 1992), decided by Judge Meyers.

The CREDITOR's reliance on those decisions, however, is outdated. Section 522(f)(1) of the Bankruptcy Code, 11 U.S.C. § 522(f)(1), was amended by the Bankruptcy Reform Act of 1994, and the newly enacted § 522(f)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 522(f)(2)(A), sets forth a mathematical formula to determine whether a lien impairs an exemption. In *In re VanZant*, 210 B.R. 1011 (BkrctyS.D.Ill. 1997), Judge Meyers examined the impact of the amended provision and concluded that *Cerniglia* was no longer viable. Reaching this result, Judge Meyers stated:

In adopting this expansive definition of "impairment," Congress established that when a debtor acts to avoid a judicial lien under § 522(f)(1)(A), the lien will survive only if, at the time of the bankruptcy filing, the debtor's property has sufficient value to satisfy all liens on the property including the judicial lien and, at the same time, give effect to the debtor's exemption in the property. In all other instances, such as when a debtor has no equity in the property above a mortgage senior to the judicial lien or when the amount of such equity is less than the amount of the lien and/or the exemption, the judicial lien will be avoided in its entirety. In this way, no part of the judicial lien remains following bankruptcy to attach to any postpetition appreciation in the value of the

property or to any increased equity created by a debtor's mortgage payments out of postpetition income. See 4 *Collier on Bankruptcy*, ¶ 522.11[3], at 522-79.

The prodebtor approach of new § 522(f)(2) is consistent with the Supreme Court's earlier decision in *Owen v. Owen*, 500 U.S. 305, 111 S.Ct. 1833, 114 L.Ed.2d 350 (1991), where the court ruled that a state, by defining exempt property in such a way as to specifically exclude property encumbered by certain liens, "[could] not achieve a similar exclusion from the Bankruptcy Code's lien avoidance provision [in § 522(f)]." 500 U.S. at 313, 111 S.Ct. at 1838; see 4 *Collier on Bankruptcy*, ¶ 522.11[3], at 522-80. Indeed, the legislative commentary to § 522(f)(2) expressly states: "By focusing on the dollar amount of the exemption and defining 'impairment,' the amendment ... clarifies that a judicial lien on property can impair an exemption even if [under state law,] the lien cannot be enforced [by sale or other means]." H.R.Rep. No. 103-835, at 53, reprinted in 1994 U.S.C.C.A.N., at 3362. New § 522(f)(2) thus underscores the Code's policy of distinguishing between a debtor's exemption rights under state law and the availability of lien avoidance in bankruptcy. In effect, while state law identifies and quantifies the property a debtor may exempt from the bankruptcy estate in those states that have "opted-out" of the federal exemptions, the Code does not adopt or preserve the state exemptions with all their built-in limitations. See *In re Davis*, 105 F.3d 1017, 1022-23 (5th Cir.1997). Rather, as implied by *Owen* and as demonstrated by the definition of "impairment" in § 522(f)(2), judicial liens on exempt property can be eliminated regardless of the content of state exemption law. See Carlson, *Security Interests on Exempt Property*, at 60.

This Court agrees with Judge Meyers' reasoning and the result reached in *VanZant*. Contrary to the CREDITOR's assertion that allowing the DEBTORS to avoid its lien is unjust and contrary to the spirit of the Bankruptcy Code, that is the result which is mandated.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

DATED: March 23, 2000.

WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE

COPIES TO:

MR. MICHAEL A. WILLIAMS
Williams, Buckrop & Malvik
1703 - 2nd Avenue
Rock Island, Illinois 61201
Attorney for Plaintiff

MR. STEPHEN ANDICH
1800 - 3rd Avenue, Suite 403
Rock Island, Illinois 61201
Attorneys for Defendant

MR. JORGE V. CAZARES
Pugh, Jones and Johnson, P.C.
180 N. LaSalle Street, Suite 2910
Chicago, Illinois 60601
Attorney for Defendant

MR. RICHARD A. BOWERS
P.O. Box 3760
Rock Island, Illinois 61204-3760
Trustee

U.S. TRUSTEE
401 Main Street, Suite 1100
Peoria, Illinois 61602

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ORDER

For the reasons stated in an OPINION filed this day, IT IS HEREBY ORDERED that the DEBTORS' Motion to Avoid Judgment Lien is hereby GRANTED and the lien is hereby declared void.

Dated: March 23_, 2000.

WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE

Copies to:
Mr. Michael A. Williams
Mr. Stephen G. Andich
Mr. Jorge Cazares
Mr. Richard Bowers
U.S. Trustee